



**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

**TE/GE: EO Examination
1100 Commerce Street
Dallas, Texas 75242**

501.03-00

Date: May 23, 2012

Number: 201240028
Release Date: 10/5/2012

LEGEND

ORG - Organization name
XX - Date Address - address

Employer Identification Number:
Person to Contact/ID Number:
Contact Numbers:
Voice:

ORG
ADDRESS

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

This is a Final Adverse Determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated November 8, 20XX, is hereby revoked and effective July 1, 20XX, you are no longer exempt under section 501(a) of the Code

Our adverse determination was made for the following reasons:

Internal Revenue Code Section 6001 requires organizations exempt from tax to keep such records and render such statements as are required by such rules and regulations as the Secretary may prescribe. Treasury Regulations section 1.6033-2 (h)(2) requires organizations exempt from tax to submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into the organization's exempt status.

You have failed to provide documents to establish that you are organized and operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3)

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120. Those returns should be filed with the appropriate Service Center.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit of declaratory judgment in the United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment by referring to the enclosed Publication 892. You may write to the Tax Court at the following address:

You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

See the enclosed Publication 1546, Taxpayer Advocate Service – Your Voice at the IRS, for Taxpayer Advocate telephone numbers and addresses.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can, however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

If you have any questions in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Enclosures:

Publication 892
Publication 1546

Internal Revenue Service

Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
Attention: Jeffrey Davis, MailStop 39
2303 W. Meadowview Road
Greensboro, NC 27407

Department of the Treasury

Date: October 18, 2011

ORG
ADDRESS

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Certified Mail – Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, please sign and return the enclosed Form 6018, Consent to Proposed Action - Section 7428. If you have already given us a signed Form 6018, you need not repeat this process. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code

In Lieu of Letter 3618

provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination
Form 6018 (2)
Envelope

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended June 30, 20XX	

LEGEND

ORG - Organization name XX - Date State - state President - president
Chairman - chairman

ISSUE:

Whether ORG qualifies for exemption under Section 501(a) as described in Section 501(c)(3) of the Internal Revenue Code?

FACTS:

ORG (the Organization) was formed and incorporated in the state of State on January 11, 20XX. The Organization was granted exemption from federal income taxes under Internal Revenue Code (IRC) §501(a) as described in §501(c)(3), and further described in §509(a)(2), on November 8, 20XX. The effective date of the Organization's exemption was determined to be January 11, 20XX.

Telephone contact was made with President, the President of the Organization, on April 29, 20XX, to initiate an examination of the Organization. President indicated that she was unsure how long she would remain the President of the Organization due to the Organization's loss of funding, and also provided the contact information of Chairman, the Chairman of the Board (and an officer) for the Organization. Upon discussing the examination with Chairman, it was agreed that the information needed would be provided at an available date.

A letter dated May 3, 20XX was sent to the Organization arranging an appointment to begin the examination process by reviewing the Organization's books and records. The letter indicated the examination was to take place on May 24, 20XX at the Organization's office at 9:30am. The letter also stated to contact the agent if the Organization had any questions. Included with the letter were Form 4564, Information Document Request (IDR), Publication 1, Your Rights as a Taxpayer, and a partially completed Form 2848, *Power of Attorney and Declaration of Representative*. On May 16, 20XX, Chairman confirmed the receipt of the correspondence, indicated the requested documents would be available, and that President would be there to answer any questions.

During the interview on May 24, 20XX with President, she indicated that the Organization had temporarily suspended its activities due to the suspension of its funding; however they hoped to continue its activities after applying to have its funding reinstated. According to President, the funding for the Organization was cut because of a dispute over the use of funds, and the Organization was suspended from being a Community Action Agency (which according to the State Department of Health and Human Service's website is an organization that helps the poor in the areas of self-sufficiency, employment, housing, education, nutrition, emergency assistance, information and referral and income management) by State in March of 20XX. President indicated that the reason for the suspension was that the Organization's governing documents did not meet the requirements regarding the selection of individuals the Organization would provide assistance, the type of assistance, etc. According to President, to get the suspension lifted, the Organization had to submit a list of corrections and changes implemented regarding its governance documentation, its program, etc. President also indicated that in the meantime, some of the Organization's former employees had decided to continue to volunteer their time for the Organization.

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Additional information to continue the examination was requested of the Organization on July 14, 20XX. The additional information was to be sent to, and received by the examining agent by July 28, 20XX. After not receiving a response from the Organization, Chairman was contacted via telephone on August 3, 20XX. Chairman returned the telephone call on August 4, 20XX, and indicated that she had not received the latest IDR because the individual assigned to pick up the Organization's mail had not provided her with the mailings. Chairman also indicated that the Organization had been evicted from its location and all the documents were placed in storage. According to Chairman, the Organization's Board of Directors was to meet in an upcoming meeting in which the Board planned to vote to file for bankruptcy and would disband after the meeting. Chairman was notified that if the Organization did not plan to resume operations, documents would have to be filed to dissolve and terminate the Organization, or risk the revocation of the Organization's tax exempt status. Chairman indicated that they would file the documentation to dissolve the Organization.

A letter, along with an IDR dated August 4, 20XX was sent to the Organization, via Chairman's personal mailing address, to request the documentation necessary to process the Organization's termination. The additional information was to be sent to, and received by the examining agent by August 18, 20XX.

A voice mail message left August 12, 20XX was received by the examining agent on August 15, 20XX. The voice mail message indicated that Chairman requested an extension of the August 18, 20XX deadline because she was working alone regarding the Organization. Telephone contact was returned to Chairman on August 17, 20XX to an extension to the due date. A voice mail message was left for Chairman granting an additional two (2) weeks (until September 1, 20XX) to submit the requested information.

A letter, along with an IDR dated September 21, 20XX was sent to the Organization, via certified mail to Chairman's personal mailing address, to again request the documentation necessary to process the Organization's termination. The cover letter, as well as the IDR, indicated "2nd Request" in bold letters clearly visible to reader of the correspondence. The Organization's response was to be received by the examining agent by October 1, 20XX.

According to the tracking information from the United States Postal Service (USPS), after not having an individual to sign for the certified mail correspondence, a notice was left for Chairman on September 22, 20XX identifying the post office location where the correspondence could be picked up. Chairman was allowed fifteen (15) days to claim the certified mail correspondence from the post office. The certified mailing correspondence was not claimed by Chairman during the 15-day grace period. The correspondence was returned to the sender as "Unclaimed" on October 8, 20XX. See Exhibit 1 for the certified mail tracking information obtained from the USPS' website.

LAW:

Internal Revenue Code (IRC) §501(a) states that an organization described in subsection (c) or (d) shall be exempt from taxation under this subtitle unless such exemption is denied under Section 502 (concerning feeder organization) or Section 503 (concerning organizations engaged in prohibited transactions).

IRC §501(c) identifies in its subparagraphs the list of organizations referred to in subsection (a).

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IRC §501(c)(3) exempts from taxation, corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.

IRC §501(d) states that the following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

IRC §509(a) states in part for purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than

(1) an organization described in section 170(b)(1)(A), other than clauses vii and viii,

(2) an organization which

(A) normally receives more than one-third of its support in each taxable year from any combination of —

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business, not including such receipts from any person, or from any bureau or similar agency of a governmental unit, in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in §4946) with respect to the organization, from governmental units, or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of —

(i) gross investment income and

(ii) the excess (if any) of the amount of the unrelated business taxable income over the amount of the tax imposed by section 511.

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IRC §170(b)(1)(A)(vi) states in part that an organization that normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit or from direct or indirect contributions from the general public.

IRC §6001 states in part that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

IRC §6033(a)(1) states in part that except as provided in paragraph (3), every organization exempt from taxation under §501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

IRC §6033(a)(3)(A) states in part that the above paragraph shall not apply to —

- (i) churches, their integrated auxiliaries, and conventions or associations of churches,
- (ii) any organization (other than a private foundation, as defined in Link section 509(a)), the gross receipts of which in each taxable year are normally not more than \$5,000, or
- (iii) the exclusively religious activities of any religious order.

IRC §7602(a) states in part that for the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized —

- (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;
- (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
- (3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Treasury Regulation §1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and

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operated exclusively for one or more purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treasury Regulation §1.501(c)(3)-1(c) specifies that with regard to the primary activities within the operational test, an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3).

Treasury Regulation §1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Treasury Regulation §1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treasury Regulation §1.6001-1(a) in conjunction with Treasury Regulation §1.6001-1(c) states in part that every organization exempt from tax under IRC §501(a) must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other materials required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC §6033.

Treasury Regulation §1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Treasury Regulation §1.6033-2(i)(2) states in part that every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status.

Revenue Ruling 59-95 concerns an organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provision of IRC Section 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

Revenue Ruling 72-369 states, in part, that in order for an organization to pass the operational test the organization's resources must be devoted to purposes that qualify as exclusively charitable.

TAXPAYER'S POSITION:

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ORG has not responded to telephone calls or certified mail. The Organization has not provided a position.

GOVERNMENT'S POSITION:

The exempt status of the ORG should be revoked because it fails to meet the requirements of Treasury Regulation §1.6033-2(i)(2) by providing the information required by the Internal Revenue Service for the purpose of inquiring into its tax exempt status.

According to §6033(a)(1) of the Internal Revenue Code, every organization exempt from taxation under IRC §501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The Organization has repeatedly been asked to submit information to the IRS for purposes of inquiring into its tax exempt status, but has failed to provide the requested information.

Although the Organization may have verbally terminated its activities, this action does not absolve the Organization of its requirements under Treasury Regulation §1.6001-1 in which every organization exempt from tax under IRC §501(a) must keep such permanent books or accounts or records to substantiate the information required by IRC §6033, and shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Furthermore, as referenced by Revenue Ruling 59-95, an organization exempt from taxation under IRC §501(a) that fails to submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status may result in the termination of its exempt status. Multiple written requests were made for the Organization to submit the necessary information to verify that it had officially dissolved as planned according to Chairman in the telephone conversation that occurred on August 4, 20XX. The Organization has failed to supply the requested information, and has not returned phone calls regarding the inquiry into its tax exempt status.

The Organization's failure to follow the above regulations and requirements, pertaining to requests made by the Internal Revenue Service into an organization's tax exempt status, should result in the loss of its tax exempt status.

CONCLUSION:

ORG does not qualify for tax exempt status under Internal Revenue Code §501(a) as described in §501(c)(3). The lack of any meaningful response to requests for information demonstrate that the Organization has not met its obligations and responsibilities to maintain tax exempt status under section 501(c)(3) of the Code. Revocation of the tax exempt status of ORG is proposed with an effective date of July 1, 20XX.

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A closing conference was not held since the Organization has repeatedly failed to respond to requests for information and attempts at communication.